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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

SECOND APPELLATE DISTRICT

DIVISION TWO

In re EZRA O., a Person Coming Under the  
Juvenile Court Law.

B252961  
(Los Angeles County  
Super. Ct. No. CK91911)

LOS ANGELES COUNTY  
DEPARTMENT OF CHILDREN AND  
FAMILY SERVICES,

Plaintiff and Respondent,

v.

DANNY O.,

Defendant and Appellant.

APPEAL from an order of the Superior Court of Los Angeles County.

Marilyn M. Mordetzky, Juvenile Court Referee. Affirmed.

Judy Weissberg-Ortiz, under appointment by the Court of Appeal, for Defendant  
and Appellant.

John F. Krattli, County Counsel, Dawyn R. Harrison Assistant County Counsel  
and Jessica S. Mitchell, Deputy County Counsel, for Plaintiff and Respondent.

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The juvenile court refused to return Ezra O. (minor) to Danny O. (father) at the 12-month review hearing. Father appeals.

We find no error and affirm.

## FACTS

### *Josie S. (Josie) and the minor*

Alicia G. (mother) gave birth to Josie, a girl, in 1999.<sup>1</sup> In December 2010, mother gave birth to the minor, a boy.

### *Events preceding the dependency case*

At some point during the last decade, mother began dating father.<sup>2</sup> According to her, they had a series of violent altercations. The first time he was violent, he grabbed her by the neck and lifted her off the ground. In 2008 or 2009, while separated, he came to her home and they argued. She believed he was jealous because she was dating another man. He put a gun to her head, and she slapped him. He laughed and said that the gun did not have any ammunition in it. After she asked him to leave her home and he refused, she called 911. The police responded and arrested both mother and father. She filed for a restraining order the next day.

In 2010, Josie accused father of fondling her vagina over her clothing on multiple occasions. Mother took Josie to the police station to make a report but did not believe father was capable of such behavior. The accusation was substantiated.<sup>3</sup> However, the police dropped its subsequent investigation, and the Department of Children and Family

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<sup>1</sup> Josie, the minor's half-sibling, is not the subject of this appeal.

<sup>2</sup> The record suggests that mother and father dated in high school, then dated again after his six-year stint in the Navy.

<sup>3</sup> Josie told the police that father touched her vagina four times, and that the most recent incident took place in March 2010. Years later, when Josie was interviewed in February 2012, she denied having any memory of being molested by father. But subsequently, when she was interviewed in March 2012, she indicated that on one occasion father touched her.

Services (Department) closed its referral. During the summer of 2011, mother's sister disclosed that she had been told by her six-year old son that he was fondled by father.<sup>4</sup> Mother deemed her sister unreliable because of past substance abuse.

In early 2012, mother received a phone call from father while she was at work. She believed that he sensed she was planning to move out of their apartment, so he threatened her and stated, "You'll get what you deserve[.] [Y]ou'll get yours." Subsequently, while they were in a hospital parking lot, father said derogatory things to mother. As he was buckling the minor into a car seat, mother tried to help. Father shoved mother's hands, and she shoved back. He punched her near an eye, and also on the nose and arm. She tried to pull his hair. She managed to scratch his arm. And then she began screaming so someone would come to her aid. He told her that bullets fly and she should be careful because a bullet might hit her. Also, he threatened to bomb mother's car and kill Josie.

Their apartment manager warned that he would call law enforcement if mother and father continued to argue, and also warned that he had advised other tenants to do the same. One day, while mother was carrying the minor, she shoved father when he was blocking her way. She then proceeded to lock herself and the minor in their bathroom. Law enforcement appeared. She told them that she and father were having a family dispute, so law enforcement left.

A few days later, the Downey Police Department received a complaint from mother. She reported that father threatened to kill her when she said she was moving out. As represented by mother, he said that if she left, he would kill her, her family and Josie. The police searched the family apartment and found five rifles, some of which were loaded.<sup>5</sup> As perceived by mother, one of the weapons had been altered to make it silent

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<sup>4</sup> About nine months later, the Department opened an investigation into alleged sexual abuse by father of two young sons of mother's sister.

<sup>5</sup> Father also had a gun at a pawn shop.

when fired. During the search, ammunition and a bullet proof vest also turned up. The authorities learned that father had a military background, and that he had been back in civilian life for six years. Mother was provided with an emergency protective order. She moved out of the apartment and began living in the home of the minor's maternal grandmother. On February 7, 2012, mother filed for a restraining order.

A social worker interviewed Josie. She claimed that she had seen six or seven of father's guns, which he said he kept for protection, and that both she and the minor had access to guns which were stored in a closet. Also, she reported hearing mother and father fight, and said that mother would have a bruise on her face "like every other weekend." Josie said that father "hit sometimes with his hand," but she denied seeing him hit mother.<sup>6</sup>

*Detention; jurisdiction*

The minor was detained after a team decision making meeting on February 14, 2012. Three days later, the Department filed a petition pursuant to section 300 of the Welfare and Institutions Code.<sup>7</sup> The juvenile court ordered the Department to provide the parties with family maintenance and reunification services.

The minor and Josie were declared dependents after the juvenile court sustained allegations that they were at risk of physical harm because mother and father had a history of domestic violence. As to Josie, the juvenile court found that she was at risk of harm and sexual abuse because father "was alleged to have" touched her inappropriately over her clothing. Regarding mother, the juvenile court found that she had failed to protect the minor and Josie.

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<sup>6</sup> Father denied ever being physically aggressive toward mother and ever having threatened to harm mother or her family. In addition, he denied any sexual abuse of Josie.

<sup>7</sup> All further statutory references are to the Welfare and Institutions Code unless otherwise indicated.

### *The case plan; father's initial participation*

The case plan called for father to attend a parenting program, a domestic violence program for batterers and individual counseling to address domestic violence and sexual abuse awareness. Father participated in the required programs by enrolling or staying enrolled in them at Aztlan Family Clinic. However, he expressed concern to a social worker that his participation in the domestic violence program would be an admission of guilt.

### *Dispositional orders*

The minor was removed from the custody of his parents and placed with maternal great aunt, Luz B. Father was granted monitored visitation.

### *Father's continuing participation in the case plan*

At Aztlan Family Clinic, father was an active participant. However, he denied all allegations of domestic violence and sexual abuse. In September 2012, he was terminated from his programs after he “flipped . . . off” a female staff member when he did not like what she said at a group session.

He subsequently enrolled in a domestic violence program with Family Service. Within a couple of months, he completed that program. He also completed an 18-session parenting course. He began weekly individual counseling in January 2013.

### *Six-month review*

For the six-month review, the Department reported that father had completed his domestic violence program at Family Service. In a progress letter, it stated that father had made adequate progress. According to the Department, father continued to deny the sexual abuse allegations and claimed that he did not need individual counseling because the criminal sex charges had been dropped. Father reported that he had enrolled in individual counseling at Southern California Counseling Center. The social worker left a message for father's counselor, Stephen L. Moore (Moore), to discuss father's participation in individual counseling but did not receive a call back.

The juvenile court ordered the minor to remain suitably placed.

### *Progress hearing*

The Department reported that when the social worker visited father's home to determine if his weapons were safely stored, father said they had been destroyed pursuant to an order from the criminal court.

Moore wrote a letter stating: "Since my last report, [father] has continued to engage in individual counseling with me on a weekly basis. In my opinion, he has made good progress in the areas previously described such as anger management, domestic violence, sexual abuse, communication skills, and the structure of health and safe family home environments."

The juvenile court granted father unmonitored visitation.

### *Twelve-month review*

At the contested 12-month review hearing in October 2013, father requested the return of the minor to his custody. The Department placed reports from August and October 2013 into evidence. On request, the juvenile court took judicial notice of the sustained section 300 petition, the case plan and all the minute orders in the case. Via its own motion, the juvenile court took judicial notice of all prior findings and orders. The issue presented was whether there would be a substantial risk of detriment to the minor if he was returned to his parents.

The evidence showed, inter alia, the following.

Father was living with his sister, his mother and his grandmother in an apartment with two bedrooms, one bathroom, a small kitchen and a large living room. He had unmonitored visits with the minor on Mondays, Wednesdays and Fridays from 10:00 a.m. to 5:00 p.m. With respect to the case plan, the Department determined that certain objectives were in progress with a projected completion date in February 2014. Those objectives were identified as: express anger appropriately, do not act negatively on impulses, and do not behave in a manner that is verbally, emotionally, physically, or sexually abusive. Because Moore left the Southern California Counseling Center, the Department tried to obtain a report from that agency's clinical director. He did not respond to the Department's inquiries, so it had no present insight into father's progress.

In October 2013, mother reported that father continuously tried contacting her by phone. She always hung up on him. When father picked up and dropped off the minor at Luz B.'s home, mother was never present. The Department determined that the minor should stay in Luz B.'s custody because mother was not maintaining appropriate boundaries with father.

No witnesses testified.

During argument, father's counsel stated that the Department failed to prove that returning the minor to father's custody posed a substantial risk of detriment. She pointed out that father was in compliance with the case plan. Specifically, he had completed domestic violence and parenting programs, and he was attending counseling on a weekly basis. Also, he had unmonitored visits since July 17, 2013, and no inappropriate behavior had been noted.

Covering all bases, father's counsel anticipated that the Department would argue that father violated his restraining order. She argued that "[t]he restraining order . . . indicates that peaceful conduct may be made with regards to the exchange of the minor. There is no evidence here that there was any type of non-peaceful contact being made or anything inappropriate."

In rejoinder, the Department's counsel stated that the Department had been unable to communicate with father's therapist, so it did not have an updated letter regarding father's progress. Also, counsel was concerned that father read the restraining order to allow him to have contact with mother. In the view of the Department's counsel, prior orders established that father was supposed to coordinate exchanges of the minor through go-betweens due to the history of domestic violence. She concluded by saying, "So at this time, the Department just does not believe that there is proof that [father is] in compliance with his individual counseling[.]" She also stated that "the issue of the recent violations of the restraining order are cause for concern." When the juvenile court questioned how father had violated the restraining order, the Department's counsel stated, "That father is contacting mother, and she considers it . . . to be harassing."

Jumping into the debate, the minor's counsel opined that "it's mischaracterizing it when [father] says he's just calling to talk about visits. I think that's part of the manipulation that comes with domestic violence. . . . [¶] I think that he still hasn't learned what he needs to learn, which is just stay away, let them be at peace and let them move on. . . . It's almost like alcohol, it's that slippery slope. And I think he's almost drinking at the well, trying to push it. [¶] I think he just needs more treatment. He's getting the unmonitored visits, [so we should] continue that way and . . . see how it goes. But I think . . . both [father and mother] need to continue in their separate treatments. I would not support a [home of parent order for] father yet." The minor's counsel wanted father's therapist to have a copy of the Department's report so that he could be informed that father was contacting mother.

The juvenile court indicated that it would entertain a home of parent father order in the future if there was evidence that mother and father had set boundaries and everything was "going fine," and if father's therapist submitted a letter. When ruling, the juvenile court found by a preponderance of the evidence that the return of the minor to father's custody would create a substantial risk of detriment. Further, it found "by clear and convincing evidence that the extent of progress made towards eliminating or mitigating the causes necessitating the placement" by father "has been substantial, other than the fact that we haven't, A, gotten a letter from his therapists; and B, we need to determine whether in fact [appropriate] boundaries can be set. [¶] And the only way to demonstrate that is by me making the orders today and see[ing] how the parents are able to cooperate with one another. And we'll look at this very shortly as to a home of parent father order, as well."

Next, the juvenile court ordered the minor returned to mother's custody. Then it stated that "we'll set it for a progress report in January [3, 2014] . . . for a home of parents order, letter from father's therapist, see how the visitation exchange is going, the compliance with the criminal protective order."

This timely appeal followed.



## DISCUSSION

### I. Applicable Law and Standard of Review.

At the 12-month review hearing, a juvenile court must return a child to his or her parent unless it finds, by a preponderance of the evidence, that returning the child would create a substantial risk of detriment to the child's safety, protection, or physical or emotional well-being. The social worker has the burden of establishing the risk of detriment. (§ 366.21, subd. (f).) Thus, the question here is whether returning the minor to father's custody represented "some danger to [the minor's] physical or emotional well-being." (*In re E.D.* (2013) 217 Cal.App.4th 960, 961.) "In evaluating detriment, the juvenile court must consider the extent to which the parent participated in reunification services. [Citations.] The court must also consider the efforts or progress the parent has made toward eliminating the conditions that led to the child's out-of-home placement. [Citations.]' [Citation.]" (*In re E.D., supra*, at p. 966.) We apply the substantial evidence test when reviewing a juvenile court's decision not to return a child to a parent. (*Ibid.*)

The dependency statute governing the 12-month review provides that if "the child is not returned to a parent or legal guardian, the court shall specify the factual basis for its conclusion that the return would be detrimental." (§ 366.21, subd. (f).) But a violation of this mandate does not require automatic reversal. "[C]ases involving a court's obligation to make findings regarding a minor's change of custody or commitment have held the failure to do so will be deemed harmless where 'it is not reasonably probable such finding, if made, would have been in favor of . . . parental custody.'" (*In re Jason L.* (1990) 222 Cal.App.3d 1206, 1218.)

### II. The Juvenile Court's Order was Supported by Substantial Evidence.

Though the juvenile court found that there was a substantial risk of detriment if the minor was returned to father, it did not make a specific finding as to why. When any lower court does not make express findings, we infer that it made every implied factual finding necessary to support its order. (*Sabia v. Orange County Metro Realty, Inc.* (2014) 227 Cal.App.4th 11, 20.)

In our view, the issue is whether father made substantive progress in his court ordered programs. If not, there was evidence of detriment. (§ 366.21, subd. (f) [“The failure of the parent . . . to participate regularly and make substantive progress in court-ordered treatment programs shall be prima facie evidence that return would be detrimental”].) We acknowledge that the juvenile court seemingly found that father did make such progress. However, it made the finding contingent by noting that it still had to get a letter from father’s therapist as well as determine whether mother and father could maintain appropriate boundaries. By making its finding contingent, the juvenile court did not render a final finding on that issue. Thus, the task falls to us to infer from the record whether there was a basis for an implied finding that father did not make substantive progress in overcoming the conditions that led to dependency jurisdiction, and that there was a risk of detriment as a result.

The record established that father engaged in repeated domestic violence against mother over the course of several years, and he threatened to kill mother and her family, including Josie. He was terminated from his programs at Aztlan Family Clinic after making an obscene gesture to a female staff member at a group session. Even though he completed a domestic violence program for batterers at another agency and went to weekly individual counseling, he continued to deny all allegations in the case. Further, he continued to call mother even though she hung up on him, a troubling fact given his past history of terrorizing her. The foregoing demonstrates that father did not make substantive progress in his programs. He cannot be expected to modify his behavior if he remains in denial. (*In re Esmeralda B.* (1992) 11 Cal.App.4th 1036, 1044, [“denial is a factor often relevant to determining whether persons are likely to modify their behavior in the future without court supervision”].)

Section 366.21, subdivision (f) required the juvenile court to make specific factual findings. As we have indicated, the juvenile court did not meet its obligation. Nonetheless, any error was harmless because its ruling was supported by substantial evidence, and it is not reasonably probable that the juvenile court would have returned custody to father if it had made specific findings.

**DISPOSITION**

The juvenile court's order is affirmed.

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\_\_\_\_\_, J.  
ASHMANN-GERST

We concur:

\_\_\_\_\_, P. J.  
BOREN

\_\_\_\_\_, J.  
CHAVEZ